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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/025,027	12/19/2001	Michael Tod Morman	KCC-16,088	5892
35844	7590	11/03/2004	EXAMINER	
PAULEY PETERSEN & ERICKSON			REICHLE, KARIN M	
2800 WEST HIGGINS ROAD			ART UNIT	
HOFFMAN ESTATES, IL 60195			PAPER NUMBER	

3761

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/025,027

Applicant(s)

MORMAN ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 8-5-04.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 14-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3-29-04, 6/14/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 1-12 and 14-25 are now withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 2-12-2004.

Claims 1, 3-4, 6-7, 11-12, and 14-25 are withdrawn in addition to claims 2, 5 and 8-10 because they do not read on the elected species, i.e. these claims now claim a method of producing elastic cuffs for a resultant garment from a precursor garment on a continuous line by applying tension to and removing tension from the precursor garment and affixing elastic to the precursor garment cuff area while tensioned, i.e. as discussed in more detail below, these claims appear to drawn to an otherwise completed individuated precursor garment not at least one continuous layer of a web of precursor garments as shown in the elected species of Figures 2-4.

### *Specification*

#### *Drawings*

2. The drawings were received on 8-5-04(Figures 1-2 and 4) and 12-19-01(Figures 3 and 5-6). These drawings are approved by the Examiner and the Draftsman.

*Description*

3. The abstract of the disclosure is objected to because on line 10 of the abstract as filed 8-5-04 it appears "substrate" should be --component--. See also discussion infra with regard to the abstract. Correction is required. See MPEP § 608.01(b).

4. The use of the trademark Lycra(page 28, second occurrence) and Spandex(pages 28 and 30)has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown in all capital letters or with a symbol but not both.

5. The disclosure is objected to because of the following informalities: 1) On page 28, line 17, "a"(first occurrence) should be deleted. On page 29, line 9, "Fluff Pulp" should be --fluff pulp--. Page 2, line 16 would be in better form if "web" were deleted. In the paragraph added to page 27, line 18, "in at least one axis" should be deleted to provide consistent antecedent basis for the originally filed claims. 2) Claims 1-12 and 14-25 now claim a method of producing cuffs, e.g., waist or leg, for a resultant garment from a precursor garment on a continuous line and claim 13 now claims a method of producing selectively elastic areas in a web suitable for garments. Applicant has redefined "precursor" on page 11(note this definition now appears to define "precursor" as components, materials, assemblies and the like which are used or exist, on a continuous or conversion line, for assembling the components into a garment in the making of a finished garment before its completion as a commercially ready product, or, in other

Art Unit: 3761

words, the assembly apparatuses and components or material, e.g. construction adhesives. Note, therefore, that the terminology "precursor" in combination with the terminology "garment" now also appears inconsistent, i.e. apparatuses for making versus product made. Note also the terminology "continuous or conversion line" is interpreted only as meaning in line manufacture, e.g. includes individuated precursor garments, as well as a web of precursor garments, manufactured in a line). However, in light of this definition, and the claim language as well as the paragraph beginning at page 4, line 16, the paragraph beginning at page 6, line 12, page 7, lines 1-4, the paragraph beginning at page 7, line 9, page 7, lines 18-22, page 8, lines 7-16, pages 28-32, the abstract and Applicant's remarks on pages 18-20 of the 8-5-04 response, it is still unclear what structure at a minimum is considered a "precursor garment"? A "web"? A "web of precursor garments"? This lack of clarity is exacerbated by the apparent use of multiple terms for the same thing. Applicant's attention is also invited to MPEP 608.01(o). A clear, consistent description of what constitutes the "precursor garment" should be set forth. As best understood the invention includes applying tension to and removing tension from 1) at least one continuous layer of a web of precursor garments or 2) the web of precursor garments and that elastic material is affixed during or is affixed prior to such tensioning. It appears that at least the terminology "component", "substrate", "layer" and "web" have all been used throughout the description to define 1). It appears that at least the terminology "components", "the other wise completed" garment, "the precursor garment assemblage" and "the...assembly...produced with all but the...elastic" have all been used throughout the description to define 2). Appropriate correction is required.

***Claim Language Interpretation***

6. Due to the lack of clarity discussed supra, a "web suitable for garments" as set forth in claim 13 will be interpreted as at least one layer which can be used in the making of a garment. With regard to claim 13, the terminology "a continuous line" is interpreted to require the in line manufacture of at least one layer with selectively elastic areas which can be used in the making of a garment but not necessarily making the garment in the same continuous line.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Baker '155 and thereby also Morman '545.

See Figures, col. 4, lines 37-41 and 55-56, col. 6, lines 12-34 of Baker, i.e. selectively elasticized areas in a web having a longitudinal direction and lateral direction wherein the web is a necked material affixed to elastic material at selected areas, and col. 4, lines 11-24 and Examples ("elastic necked bonded laminate") of Baker, and thereby '545' at Figures, abstract, col. 3, lines 19-43, col. 3, line 66-col. 4, line 46, col. 5, lines 40-56, col. 16, lines 35-43, i.e. the material is necked on a continuous line, is affixed to elastic, which elastic overlies only selected portions, while the material is necked and the necking tension is removed subsequent to affixation, and see again col. 4, lines 20-21, i.e. the material, i.e. the web areas outside the

Art Unit: 3761

laminate areas of elastic and material, is caused to retract, i.e. expand, towards its original dimension when the tension is removed, i.e. relaxed. It is the Examiner's first position that the Baker reference explicitly teaches holding of the selected area of the web by the elastic material at a dimension narrower than the second width at the portions of Baker specified above. In any case, the Examiner's second position, since the Baker reference teaches, e.g., completely affixing unstretched elastic material to necked material only in selected areas, i.e. the same method performed using the same materials as claimed, there is sufficient factual basis for one to conclude that the selected area of the material is held by the unstretched elastic material at the necked dimension at which the elastic was attached rather than retract, i.e. expand, towards its relaxed original dimension when the necking tensioning is removed while the areas of the web not underlying and attached to the elastic material, i.e. only the material, will retract, i.e. expand, towards its relaxed original dimension when the necking tensioning is removed, i.e. the last two lines of claim 13 are inherent in the method taught by Baker. See MPEP 2112.

### *Response to Arguments*

9. Applicant's remarks with regard to the informalities have been noted but are either deemed moot in that they have not been raised or are deemed not persuasive for the reasons set forth supra. Applicant's remarks with regard to the prior art rejections have been considered but are deemed moot in that those prior art rejections have not been raised. It is however noted that Applicant argued that the art did not teach how the substrate and elastomeric react together to disclose the controlled forces necessary according to the method of the present invention. The description sets forth some degree of tensioning of the substrate, i.e. that sufficient to neck, and

Art Unit: 3761

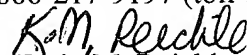
no or low amount of stretch in the elastic as affixed. Are these the controlled forces referred to? If not, where are such forces set forth? Applicant's request for an interview is noted. However in light of the new grounds of rejection and other new issues, such request is held in abeyance until review of this action by the Applicant. Furthermore, in order more readily identify such a request in a timely manner, Applicant is requested to personally contact the Examiner with any further requests for an interview.

*Conclusion*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
October 21, 2004